

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRELL K. OSBORNE, SR.
Plaintiff,

vs.

THE COUNTRY OF WAYNE,
CHECK ENFORCEMENT PROGRAM,
DARRYL EARL, AND
KIM L. WORTHY

Defendants.

Case No. 07-11835

DISTRICT JUDGE GERALD E. ROSEN
MAGISTRATE JUDGE STEVEN D. PEPE

**ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT (Dkt. # 14)**

On April 26, 2007, Plaintiff, Darrell K. Osborne Sr. filed this claim alleging that Defendants violated the Fair Debt Collection Practices Act ("FDCPA") by unfairly attempting to collect a debt incurred by Plaintiff (Dkt. #1). The factual issues raised by Plaintiff are clear and straightforward. It is Plaintiff's position that he is not responsible for any debts incurred from checks issued by him with insufficient funds where Defendant failed to respond to Plaintiff's request to validate the debt.

On June 1, 2006, Judge Rosen entered an order requiring the U.S. Marshals to service a copy of the complaint, summons this order to Defendants (Dkt. # 4). The U.S. Marshal Service acknowledged receipt of these materials on June 5, 2007 (Dkt. # 5).¹ On August 23, 2007, Plaintiff filed a Request for Clerk's Entry of Default Judgment which was denied the same day (Dkt. ## 8, 9). An amended Request for Clerk's Entry of Default Judgment was filed on August 30, 2007 (Dkt. # 10). On September 4, 2007, Plaintiff's amended request was denied because an

¹ While the acknowledgment refers to "U.S. Marshal Service", the official Department of Justice title is "U.S. Marshals Service" – see e.g. <http://www.usmarshals.gov/>.

acknowledgment of receipt had not been received at that time (Dkt. # 13). On October 23, 2007, Plaintiff filed the current Motion for Order Entering Default of Defendants, or for an Order Directing Clerk of the Court to Enter Default of Defendants or in the Alternative Motion for Order to Direct or Order United States Marshal Service to Confirm and Complete Service (Dkt. # 14).

On October 25, 2007, the Court received Notice and Acknowledgment of Receipt of Summons and Complaint Returned Executed (Dkt. 15). In this Notice, Defendants' counsel acknowledged receipt on behalf of Defendants Check Enforcement Program, Darryl Earl and Kim L. Worthy. Counsel also noted that no Complaint against Wayne County had been received.

On October 26, 2007, Ronald P. Weitzman entered an appearance on behalf of all Defendants and requested that all future pleadings be directed to his attention (Dkt. # 16). Defendants filed their answer and jury demand that date (Dkt. # 17).

Given that Defendants have appeared and answered the complaint, a default is not appropriate. Accordingly, Plaintiff's motion is DENIED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and LR 72.1(d).

SO ORDERED.

Date: October 31, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

This is to certify that on October 31, 2007 , I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Ronald P. Weitzman , and I hereby certify that I have mailed by United States Postal Service a copy of the paper to the following non-ECF participants: Darrell K. Osborne, Sr., P.O. Box 32810, Detroit, MI 48232

s/ James P. Peltier
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